THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24872 of 2006

29.11.2006

Between:

Alla Pullamma @ Pushpavathi, W/o.Late Brindadar

... Petitioner

AND

The Managing Director, AP TRANSCO, Somajiguda, Hyderabad
And others

... Respondents

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.24872 of 2006

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in not paying compensation to the death of petitioner's son due to electrocution as illegal and arbitrary, and for a consequential direction to the respondents to pay a sum of Rs.10,00,000/- to the petitioner.

The petitioner and her son are allegedly joint owners of agricultural land total admeasuring Acs.9.30 guntas in survey No.235/2 (Acs.2.10 guntas) and survey Nos.26/A1, 28/AA, 235/E, 250, 117/6 and 119/6 (7.20 guntas) situated at Thirumalayapalem village and Mandal in Khammam District. The son was statedly earning a sum of Rs.1,00,000/- from agriculture. On 30.9.1998, the provident was not kind to the petitioner, after a brief hospitalization her son died due to electrocution on coming into contact with a livewire in the cotton field. A case being Crime No.73 of 1998 was registered at P.S.Thirumalayapalem. As her son, only bred winner of the family, died due to alleged negligence of the respondents, they are liable to pay compensation. The petitioner gave a legal notice on 17.8.1999 to the third respondent and after receiving the same, an amount of Rs.10,000/- was sanctioned as Ex-gratia. The compensation was not paid for negligence. Therefore, the present writ petition is filed.

The petitioner's son, Alla Navin, died on 30.9.1998. The petitioner did not file any suit but approached the third respondent, who informed the petitioner's advocate that an amount of Rs.10,000/- was sanctioned towards Ex-gratia to the legal heir of Alla Navin, which is available for disbursement, and the same may be taken by the petitioner. Even thereafter the petitioner did not take any steps either in approaching this Court or for filing suit for damages. In such a background, is it permissible for this Court to entertain such a claim?

Apart from the question of filing a suit for recovery of damages for the death of petitioner's son, whether a writ petition claiming damages for the death due to electrocution is maintainable? The question is no more *res integra*. In **CHAIRMAN, GRID CORPORATION OF ORISSA LTD. v. SUKAMANI DAS**[1], facts were as follows. Pratap Chandra Das, husband of Sukamani Das on a day of dark clouds and thunderbolts, came in contact with an electric wire lying across the road and died. A writ petition was filed before Orissa High Court which accepted the writ petition and awarded compensation of Rs.1,00,000/-

for the negligence of the appellant corporation. The Supreme Court reversed the judgment of the Orissa High Court observing as under:

> "In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admitted/*prima facie* amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No.5229 of 1995."

In **TAMIL NADU ELECTRICITY BOARD v. SUMATHI**[2], after referring to **CHAIRMAN, GRID CORPORATION OF ORISSA LTD. v. SUKAMANI DAS** (supra) and the other case law, the Supreme Court ruled as under:

> "In view of the clear proposition of law laid by this Court in Sukamani Das case (supra) when disputed question of fact arises and there is clear denial of any tortuous liability remedy under Article 226 of the Constitution may not be proper. However it cannot be understood as laying a law that in every case of tortuous liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to

proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. I n **U.P.STATE CO-OPERATIVE LAND DEVELOPMENT BANK LTD. v. CHANDRA BHAN DUBEY**[3] where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views. It has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy."

Yet again, it was observed that:

"Since disputed questions of facts arose in the present appeals the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the new Act. There was no arbitration agreement within the meaning of Section 7 of the new Act. Under the new Act award can be enforced as if it is a decree of a court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the new Act. Appellant had also raised plea of bar limitation as in many cases if suits had been filed those would have been dismissed as having been filed beyond the period of limitation. In our opinion exercise of jurisdiction by the High Court in entertaining the petitions was not proper and High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the new Act. Mr.Mohan also contended that the appellant did not consent to adjudication of subject disputes by an arbitrator. That the matter was referred to the arbitrator without the consent of the appellant as now being alleged cannot be taken note of as the High Court specifically said that it was by consent of the parties that the reference was being made to the arbitrator."

It is brought to the notice of this Court by the learned Standing Counsel that as per the claim for payment of Ex-gratia, the grant of Ex-gratia was already paid to the petitioner. If so advised, the petitioner may now approach the Civil Court and file a suit. In this writ petition, no relief can be granted.

The writ petition, with the above observations, is dismissed. No costs.

(**V.V.S.RAO, J**)

November 29, 2006
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[1] (1999)7 SCC 298

[2] AIR 2000 SC 1603

[3] (1999)1 SCC 741 (1999 AIR SCW 364:AIR 1999 SC753)